IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15/11/2006

CORAM :

THE HONOURABLE MR.JUSTICE K.MOHAN RAM

WRIT PETITION NOS.32081 to 32083, 31739 to 31749, 32020 to 32023, 32030 to 32033, 32108 to 32111, 32742 to 32745,32799 to 32807, 33159, 34302 and 34612 to 34615 OF 2003, 2860, 11004, 14060, 16026, 32149, 36372 to 36376 of 2004, 1207, 1208, 3175, 4883, 4884, 5791, 7727, 7728,7799, 8910, 8911, 9271, 9937, 10883, 10884, 12273, 14376, 14410, 17890 to 17892, 18411, 18415, 18507, 20770, 11169, 22443 and 22444 of 2005 and 7936 of 2006 and all connected pending WPMPS

N.Jagannathan & Sons,
Vaniyambadi. ..Petitioner in WP.No.32081/03.

Sankar Traders,
No.23, Sivasakthi Nagar,
Tirupathur. ..Petitioner in WP.No.32082/03.

Sarkar Coconut Co.
Neelfield Vaniyambambadi. ..Petitioner in WP.No.32083/03.

Arul Agencies, Vaniyambadi. ..Petitioner in WP.No.31739/03.

Sri Balaji Coconut Trders,
Mettupalayam,
Vaniyambadi 635 754. ..Petitioner in WP.No.31740/03.

Padma Seenivasalu Coconuts
Modagapalli Village,
Ambur 635 802. ..Petitioner in WP.No.31741/03.

Sri Amman Coconut Traders,
Amburpet, Vaniyambadi. ..Petitioner in WP.No.31742/03.

K. Purushothaman ..Petitioner in WP.No.31743/03.

M.Kannan ..Petitioner in WP.No.31744/03.

Sri Vigneshwara Coconut Traders,
Amburpet, Vaniyambadi. ..Petitioner in WP.No.31745/03.

Sri Vigneshwara Agencies,
Vaniyambadi. ..Petitioner in WP.No.31746/03.

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Sri Venkateshwara Coconut Co,
Vellakuttai, Vaniyambadi. ..Petitioner in WP.No.31747/03.

Sri Venkateswara Coconut Traders,
Chennampet, Vaniyambadi. ..Petitioner in WP.No.31748/03.

Om Vijalakshmi Coconut,
Vaniyambadi. ..Petitioner in WP.No.31749/03.

M.P.M.Vijayalakshmi & Co.,
Pudur, Vaniyambadi. ..Petitioner in WP.No.32020/03.

Anjana Agencies,
Chennampet,
Vaniyambadi. ..Petitioner in WP.No.32021/03.

Matha & Company, Vaniyambadi. ..Petitioner in WP.No.32022/03.

Purula Coconut co.,
Amburpet, Vaniyambadi. ..Petitioner in WP.No.32023/03.

M.R.Mohamed Khaleel,
Tirupathur. ..Petitioner in WP.No.32030/03.

M.K.Azizur Rahman,
Tirupathur. ..Petitioner in WP.No.32031/03.

Hindustan Coconut Traders,
Tirupathur. ..Petitioner in WP.No.32032/03.

K.M.Jayaraman ..Petitioner in WP.No.32033/03.

A.A.Gee and Company,
Fort, Vaniyambadi. ..Petitioner in WP.No.32108/03.

Barath Coconut Company,
Vaniyambadi. ..Petitioner in WP.No.32019/03.

Sri Lakshmi Agencies,
Vaniyambadi ..Petitioner in WP No.32110/2003

M.Palani Mudiar Son
Chettiappanoor, Vaniyambadi ..Petitioner in WP No.32111/2003

Lakshmi Trading Company,
Gudiyattam ..Petitioner in WP No.32742/20003

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Kavitha Trading Co.,
Gudiyattam ..Petitioner in WP No.32743/2003

K.O.Sabeel Ahmed ..Petitioner in WP No.32744/2003

P.G.Selvaraj ..Petitioner in WP No.32745/2003

Gajalakshmi Trading co.,
Gudiyattam ..Petitioner in WP No.32799/2003

G.K.Manickam Chetty Sons & Co.,
Gudiyattam ..Petitioner in WO No.32800/2003

P.K.G.Manoharan ..Petitioner in WP No.32801/2003

G.G.Trading Co.,
Gudiyattam ..Petitioner in WP No.32802/2003

Karthigeya Traders ..Petitioner in WP No.32803/2003

Saaravana Coconut Company
Vaniyambadi ..Petitioner in WP No.32804/2003

K.O.Rajeeque Ahmed ..Petitioner in WP No.32805/2003

K.O.Basheer Ahmed Coconut Traders
Melalathur,
Gudiyattam Taluk ..Petitioner in WP No.32806/2003

K.O.Basheer Ahmed Individual
Gudiyattam Taluk ..Petitioner in WP No.32807/2003

G.M.B. Star Coconut,
Vaniyambadi Vellore ..Petitioner in WP No.33159/2003

P.K.R.Coconut Traders by its
Proprietor, Vaniyambadi ..Petitioner in WP No.34302/2003

Arihanth Cocounut Co.
Gudiyattam ..Petitioner in WP No.34612/2003

G.K.Manickam Chetty Co.,
Gudiyatham -632 602 ..Petitioner in WP 34613/2003

Jain Coconut Co.,
Gudiyattam ..Petitioner in WP No.34614/2003

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Vardhaman Traders,
Gudiyatham ..Petitioner in WP No.34615/2003

Sri Ganesh Cocounut Traders
Vaniyambadi Road, Tirupathur ..Petitioner in WP No.2860/2004

S.Pavithra & Co.rep. by its
Partner Smt. Manimozhi,
Sholavanthan ..Petitioner in WP No.11004/2004

C.A.B.Electricals & Cocounut
Merchants, Gudiyadam ..Petitioner in WP No.14060/2004

Ghani Trading Co. rep. by its
Proprietor M.M.Mohamed Servai
Chokkalingapuram ..Petitioner in WP 16026/2004

Sri. Subalakshmi Cocoanut Co.
rep. by its Proprietor
M.D.Mahalingam ..Petitioner in WP No.32149/2004

V.K.T.Traders, rep. by its
Proprietor,
V.T.Chandrasekaran ..Petitioner in WP No.36372/2004

C.T.Enayathullah ..Petitioner in WP 36373/04

Hafeez Coconuts
rep. By its Proprietor,
F.Hafeez Ul Rahman. ..Petitioner in WP 1207/2005

K.C.R.Traders rep. by its
Proprietor H.Mustafa ..Petitioner in WP 1208/2005

Quality Coconut, Coconut merchant &
Commissioner Agent rep. by its
Proprietor
Mohamed Aslam ..Petitioner in WP No.3175/2005

Anand Coconut Traders rep. by its
Proprietor,
A. Janardanan ..Petitioner in WP No.4883 &
4884/2005

Ataulla & Co. rep. by its Partner,
Abaulla ..Petitioner in WP No.5791/2005

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B.Dinaklaran Traders, rep. by its
Proprietor B.Dinakaran ..Petitioner in WP 7727/2005

V.K.T. & Co., rep. by its
Managing Director
Mr.V.T.Chandrasekaran ..Petitioner in WP 36374/2004

MS Coconut Company rep. by its
Proprietor M.Senguthuvan ..Petitioner in WP 36375/2006

Afrosy Coconut Traders rep. by
its Proprietor Afrosy ..Petitioner in WP 36376/2006

Thilaklavathi Coconut Co.
rep. by Proprietor
S.Balaraman ..Petitioner in WP 7728/2005

Sankar Traders Coconut merchant
& Order Supplier, Nimmiampet (via)
Vaniyambadi ..Petitioner in WP 7799/2005

Himalaya Coconut Co. rep. by its
Partner R.Neelakandan ..Petitioner in WP No.8910/2005

Taj Traders rep. by its Prop.
G.Syed Tajudeen ..Petitioner in WP 8911/2005

K.P.A. Coconuts rep. by Prop.
K.Paniventhan ..Petitioner in Wp No.9271/2005

G.M.Khalilur Rahman
South India Coconut Traders
rep. by its Prop.
G.M.Khalilur Rahman ..Petitioner in WP No.9937/2005

V.N.Cocoanuts, Anjikuppam Village
rep. by its Proprietor ..Petitioner in WP No.10883/2005

Sri Varadharaja Coconut Company
rep. by its Proprietor ..Petitioner in WP No.10884/2005

M/s. S.Md. Aslam, rep. by its
Proprietor ..Petitioner in WP No.12273/2005

Sri Vishwa Lakshmi Traders
rep. by its Proprietor
Kavitha. ..Petitioner in WP No.14376/2005

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M/s. Amaravathi Traders rep. by its
Proprietor, Tamizh Selvi ..Petitioner in WP No.14410/2005

Kavitha Coconut Taders prop.
S.N.Subramani ..Petitioner in WP No.17890/05

G.S.Coconut Proprietor
S.Syed Ghouse ..Petitioner in WP 17891/2005

Sri Sakthi Traders Cocount
Merchants rep. by its Partner
M.R.Subramani ..Petitioner in 17892/2005

K.L.M.Traders rep. by its Proprietor
K.Loganthan ..Petitioner in WP
No.18411/2005

K.L.S.Coconut Traders rep. by its
Proprietrix Mahalakshmi .. Petitioner in WP
No.18415/2005

Basheer Coconut Merchant
rep. by Prop.
K.A.Abdul Raheem ..Petitioner in WP No.18507/05

G.Jagadeesan Proprietor
Engeyes General Merchants ..Petitioner in WP 20770/2005

Deepam Coconut Company rep. by
its Partner R.Kesvaraju ..Petitioner in WP No.11169/2005

Rizwan Coconut Company, rep.
by Prop.V.M.Zabrudeen ..Petitioner in WP 22443/2005

Kamal Co., Coconut Merchant
rep. by its Prop.
V.R. Mohiuddin ..Petitioner in WP 22444/05

Imperial coconuts rep. by its
Partner A.K.Mohammed Abbas ..Petitioner in WP 7936/2006

-vs-

The Dy. Commercial Tax Officer,
Vaniyambadi. ..1st Respondent in WP
No.32081/2003

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The Commercial Tax Officer,
FAC, Tirupathur ..1st Respondent in WP No.32082/2003

The Dy. Commercial Tax Officer (Main)
Gudiyatham (West) ..1st Respondent in WP No.31739/2003

The Dy. Commercial Tax Officer,
Vaniyambadi. ..1st Respondent in WP.Nos.32083/2003, 31740/03.

The Dy. Commercial Tax Officer (Addl.)
Gudiyatham (West) ..1st Respondent in WP No.31741/2003

The Commercial Tax Officer,
Vaniyambadi ..1st Respondent in WP No.31742/2003

The Dy. Commercial Tax Officer (Main)
Gudiyatham (West) ..1st Respondent in WP No. 31743/2003

The Dy. Commercial Tax Oficer,
Vaniyambadi ..1st Respondent in WP No.31744/2003

The Commercial Tax Officer,
Vaniyambadi ..1st Respondent in WP No.31745/2003

The Commercial Tax Officer,
Vaniyambadi ..1st Respondent in WP No.31746/2003

The Commercial Tax Officer,
Vaniyambadi ..1st respondent in WP No.31747/2003

The Commercial Tax Officer,
Vaniyambadi. ..1st Respondent in WP No.31748/2003

The Commercial Tax Officer,
Vaniyambadi ..1st Respondent in WP No. 31749/2003

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The Dy. Commercial Tax Officer,
Vaniyambadi ..1st Respondent in WP No.32020/2003,32108/03

The Commercial Tax Officer,
Vaniyambadi ..1st Respondent in WP No.32021/2003, 32022 & 32023/03, 32033/2003

The Commercial Tax Officer (FAC)
Tirupathur District. ..1st Respondent in WP No.32030/2003 to 32032/03

The Commercial Tax Officer,
Vaniyambadi ..1st Respondent in WP Nos. 32109/03 to 32111/2003

The Dy. Commercial Tax Officer (Addl.)
Gudiyatham (West) ..1st Respondent in WP No.32742/2003

The Dy. Commercial Tax Officer,
Gudiyatham (West) ..1st Respondent in WP No.32743/2003 to 32745/03

The Dy. Commercial Tax Officer,
Gudiyatham (West) ... 1st Respondent in W.P.No.32799/03

The Dy Commercial Tax Officer (Main)
Gudiyatham (West) ... 1st Respondent in W.P.No.32800/03

The Dy commercial Tax Officer,
Gudiyatham (West) ... 1st Respondent in W.P.No.32801 and 32802/03

The Dy Commercial Tax Officer
Vaniyambadi. ... 1st Respondent in W.P.No.32803/03

The Commercial Tax Officer
Vaniyambadi ... 1st Respondent in W.P.No.32804/03

The Dy Commercial Tax Officer(Main)
Gudiyatham[West] ... 1st Respondent in W.P.No.32805 to 32807/03

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The Commercial Tax Officer
Vaniyambadi, Vellore. ... 1st Respondent in W.P.No.33159/03

The Dy Commercial Tax Officer
Gudiyatham (East) ... 1st Respondent in W.P.No.34612/03

The Commercial Tax Officer
Gudiyatham (West) Gudiyatham ... 1st Respondent in W.P.No.34613/03 & 34614/03

The Dy. Commercial Tax Officer (Addl)
Gudiyatham (West) ... 1st Respondent in W.P.No.34615/03

The Commercial Tax Officer (FAC)
Tirupathur. ... 1st Respondent in W.P.No.2860/04

The Dy. Commercial Tax Officer
Gudiyatham (East) ... 1st Respondent in W.P.No.14060/04

The Dy. commercial Tax Officr
( West)
Gudiyatham, Vellore District. ... 1st Respondent in W.P.Nos.32149/04, 36372 to 32376/04, 1207/05

The Deputy Commercial Tax Officer,
Vaniyambabi, Vellore District. ...1st Respondent in WP.1208/05.

The Commercial Tax Officer
(Bazaar Circle)
Salem, Salem District. ... 1st Respondent in W.P.No.3175/05

The Commercial Tax Officer
Krishnagiri. ... 1st Respondent in W.P.No.4883 & 4884/05

The Dy Commercial Tax Officer,
(WEST)Gudiyatham, Vellore District . .. 1st Respondent in W.P.No.5791/05

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The Dy Commercial Tax Officer[East],
Gudiyatham, Vellore District ... 1st Respondent in W.P.Nos.7727 & 7728/05

The Dy Commercial Tax Officer,
vaniyambadi, Vellore District. ... 1st Respondent in W.P.No.7799/05

Dy commercial Tax Officer
Tirupathur Assessment Circle
Tirupathur, Vellore District ... 1st Respondent in W.P.No.8910/05

The Commercial Tax Officer
Tirupathur Assessment Circle
Tirupathur, Vellore district ... 1st Respondent in W.P.No.8911/05

Dy commercial Tax Officer,
Vaniyambadi, Vellore District ... 1st Respondent in W.P.No9271/05

The Dy commercial Tax Officer
Tirupathur Assessment Circle
Tirupathur, Vellore District ... 1st Respondent in W.P.No.9937/05

The Dy Commercial Tax Officer (WEST)
Gudiyatham, Vellore District ... 1st Respondent in W.P.No.10883/05 & 10884/05

The Commercial Tax Officer,
Tirupathur, Vellore District. ... 1st Respondent in W.P.No.12273/05

The Commercial Tax Officer
Tirupathur Assessment Circle,
Tirupathur, Vellore District. ... 1st Respondent in W.P.No.14376/05, 14410/05.

The Dy Commercial Tax Officer
Tirupathur, Vellore District ... 1st Respondent in W.P.No.17890 to 17892/05

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The Dy Commercial Tax Officer
Gudiyatham (West) ... 1st Respondent in
W.P.No.18411/05

The Dy Commercial Tax Officer (Addl)
Gudiyatham (West) ... 1st Respondent in
W.P.No.18415/05

Dy Commercial Tax Officer West
Gudiyatham Taluk, Vellore District ... 1st Respondent in
W.P.No.18507/05

The Commercial Tax Officer
Swamangalam Circle, Salem. ... 1st Respondent in
W.P.No.20770/05

The Dy Commercial Tax Officer
Vellore Rural, Vellore ... 1st Respondent in
W.P.No.11169/05

Dy Commercial Tax Officer (East)
Gudiyatham, Vellore District ... 1st Respondent in
W.P.No.22443 &
22444/05

The State of Tamilnadu
rep by the Secretary to Government
Department of Commercial Taxes &
Religious Endowments
Fort St. George, Chennai-9.

Union of India rep by the Secretary
Ministry of Finance Department
of Revenue, New Delhi. ... Respondents 2 & 3 in
W.P.32081, 32082, 32083, 31739,
31740, 31741, 31742, 31743, 31744 to
31749/03 32020/03, 32021 to
32023/03, 32030 to 32033/03,
32108/03 to 32109 to 32111/03, 32742
to 32745/03,32799 to 32807/03
33159/03, 34612/03, 34613 OF 2003,
to 34615/03 2860/04 14060, 32149/04
36372 to 36376 of 2004, 1207/05,
1208/05, 3175, 5791, 7727, &
7728/05, 7799, 9271, 10883 &
10884/05 , 12273, 17890 to 17892/05,

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1. Union of India
rep by the Secretary
Ministry of Finance
Department of Revenue
New Delhi.

2. The State of Tamilnadu
rep by the Secretary to Government
Department of Commercial Taxes
and Religious Endowments, Fort St. George
Chennai-9.

3. The Dy Commercial Tax Officer
Vaniyambadi- 635 753. ... Respondents in
W.P.NO.34302/03

1. The Commercial Tax Officer
Thirumangalam. ... 1st respondent in
W.P.11004/04

2. The State of Tamilnadu
rep by the Secretary to Government
Commercial Taxes Department
Fort St. George, Chennai-9. ... 2nd Respondent in
W.P.11004/04 in
W.P.8910/05, 8911/05,
9937/05, 14376/05,
14410/05

3. Union of India
rep by the Secretary
Ministry of Finance,
Department of Revenue
New Delhi. ... 3rd Respondent in
W.P.11004/04
in W.P.8910/05, 8911/05,
9937/05, 14376/05,
14410/05

1. The Dy Commercial Tax Officer
Melur.

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2. The State of Tamilnadu
rep by the Secretary to Government
Commercial Taxes Department,
Fort St. George, Chennai-9.

3. Union of India,
rep by the Secretary
Ministry of Finance, Department of
Revenue, New Delhi. ... Respondents in
W.P.No.16026/04

The state of Tamilnadu
rep by the Secretary to Government
Department of Commercial Taxes & Religious
Endowments, Fort St. George,
Chennai-9. ... 2nd Respondentin
W.P.Nos.4883 & 4884/05

1. Union of India
rep by its Secretary
Ministry of Finance, Department of Revenue
New Delhi.

2. The State of Tamilnadu
rep by Secretary to Government
Department of Commercial Taxes
and Religious Endowments,
Fort St. George,
chennai-9.

3. The Dy Commercial Tax Officer,
Salem Rural Circle, Salem. ... Respondents in
W.P.No.7936/06

Writ Petition No.34302/03:

Petitions under Article 226 of the Constitution of India, praying to issue a Writ of Declaration or any other order or direction in the nature of Writ declaring Central Sales tax on the inter state sales of watery coconuts effected by the dealers in disregard to Serial No.17, part B of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959, read with Section 8 and Section 9(2) of the Central Sales Tax Act, 1956 as ultra vires, invalid unconstiuttional and without the authority of law, in so far as the petitioner is concerned.

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WP.No.4883/2005: To issue a Writ of Certioari to call for the records on the files of the 1st respondent herein in CST.No.44569/2002-03 dt. 31.12.2004 quashing the said proceedings.

WP.No.7936/2006: To issue a Writ of Declaration declaring that the 3rd respondent is incompetent to impose or recover Central Sales Tax on the inter-state Sales of watery coconuts by virtue of serial No.17, part B of the third Schedule to the Tamil Nadu General Sales Tax Act 1959 read with Section 8 and Section 9(2) of the Central Sales Tax Act 1956.

WP.Nos.11004/04, 16026/04: To issue a Writ of Declaration or any other appropriate writ, order or direction in the nature of a writ, declaring that the First and Second respondents herein are not competent to impose or recover central sales tax on the inter-state sales of watery coconuts by virtue of Serial No.17, Part B of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959, read with Section 8 and Section 9(2) of the Central Sales Tax Act, 1956, since Serial No.6(viii) of the Second Sechedule to the Tamil Nadu General Sales Tax Act, 1959 is inconsistent with section 14(vi)(viii) of the Central Sales Tax Act, 1956.

Prayer in all Wps. Petitions filed under Article 226 of the Constitution fo India, to issue a Writ of Declaration or any other appropriate Writ, Order or direction under Article 226 of the Constitution of india, declaring that the First and Second Respondents herein are incompetent to impose or recover Central Central Sales Tax on the inter-State sales of watery coconuts by virtue of Serial No.17, Part B of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959, read with Section 8 and Section 9(2) of the Central Sales Tax Act, 1956, since Serial No.6(viii) of the Second Schedule to the Tamil Nadu General Sales Tax Act, 1959 is inconsistent with Section 14(vi) (viii) of the Central Sales Tax Act, 1956 respectively in other Wps.

For Petitioners in WP.NOs.32081 to 32083, 31739 to 31749, 32020 to 32023, 32030 to 32033, 32108 to 32111, 32742 to 32745, 32799 to 32807, 33159 and 34612 to 34615 of 2003, 2860 and 14060 of 2004 and 4883 & 4884 of 2005 :
Mr.C.Natarajan, SC for Mr.N.Inbarajan
For Petitioner in WP.No.34302 of 2003 : Mr.S.Gnaneswaran
For Petitioners in WP.Nos.11004 and 16026 of 2004 :
Mr.P.Radhakrishnan
For Petitioners in WP.Nos.32149 & 36372 to 36376 of 2004 and 1207, 1208, 3175, 5791, 7727, 7728, 7799, 9271, 10883, 10884, 12273, 17890 to 17892, 18507, 22443 22444 and 11169 of 2005 : Mr.G.Jeremiah
For Petitioners in WP.NOs.8910, 8911, 9937, 14376 & 14410 of 2005 : Mr.K.Soundararajan
For Petitioners in WP.NOs.18411 and 18415 of 2005 :
Mr.T.Dhanyakumar

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For Petitioner in WP.NO.20770 of 2005 : Mr.P.Jagadeesan
For Petitioner in WP.No.7936 of 2006 : Mr.K.Selvaraj
For 1st Respondent in all Wps. : Mr.B.Nedunchezian, G.A.[Taxes]
For 3rd Respondent in WP.7936/06,
For 2nd Respondent : Mr.T.Ayyasamy, Spl. GP[Taxes]
For 3rd Respondent in all Wps.
1st Respondent in WP.7936/06 : No Appearance.

C O M M O N O R D E R

The main question that is involved for consideration in these writ petitions is as to whether interstate sales of watery coconuts are liable to sales tax under Central Sales Tax Act, 1956 (hereinafter referred to as the Central Act).

2. Learned counsel on either side submit that the above said question has to be considered in the light of the provisions set out hereunder :

"i. Section 6 of the Central Act :
Liability to tax on interstate sales :

'(1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of interstate trade or commerce during any year on and from the date so notified :

PROVIDED that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub.section (3) of Section 5 is a sale in the course of export of those goods out of the territory of India.

(1A) A dealer shall be liable to pay tax under this Act, on a sale of any goods effected by him in the course of interstate trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.'

ii. Section 8(2)(A) of the Central Act :
(as it stood from 1.4.1973 to 10.5.2002)

'(2-A) Notwithstanding anything contained in sub.section (1-A) of Section 6 or sub.section (1) or clause (b) of sub.section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the

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turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or is subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.'

iii. Section 8(2)(C) of the Central Act (as it stands today effective from 11.5.2002) :

'(2) The tax payable by any dealer or his turnover insofar as the turnover or any part thereof relates to the sale of goods in the course of interstate trade or commerce not falling within sub.section (1),-

(a)...

(b)...

(c) in the case of goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally shall be nil, and for the purpose of making any such calculation under clause (a) or clause (b), any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

Explanation : For the purposes of this sub.section, a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditiions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.'

iv. Section 14 of the Central Act :

Section 14(vi) of the Central Act (as it stood from 15.1.1957 to 31.3.1973) :

'vi. Oil seeds that is to say, seeds yielding non-volatile oils used for human consumption, or in industry or in the manufacture of varnishes, soaps and the like or in lubrication and volatile oils used in medicines, perfumes, cosmetics and the like.

Section 14(vi) of the Central Act as it stands today (effective from 1.4.1973)

viii. Coconut (i.e copra excluding tender coconuts) (cocos nucifera).'

v. Section 15 of the Central Act :

(as it stood from 1.10.1958 to 10.5.2002)

'Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State

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Every sales tax law of a State shall, insofar as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :-

'a. The tax payable under that law in respect of any dealer or purchase of goods inside the State shall not exceed for per cent of the sale or purchase price thereof and such tax shall not be levied at more than one stage.'

Section 15 of the Central Act as it stands today :

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent of the sale or purchase price thereof.'

vi. II Schedule - Tamilnadu General Sales Tax Act, 1959 (hereinafter referred to as the State Act) :

| S.No. | Description of Goods | Point of Levy | Effective From |
|---|---|---|---|
| 1. | 2. | 3. | 4. |
| 3-B | Dessicated coconut | At the point of first sale in the State | 27.3.2002 |
| 6(viii) | 6. Oil seeds, that is to say, (as it stood prior to 1.4.1994) Coconut (i.e copra excluding tender coconuts (cocos nucifera) | At the point of last purchase in the State | ..... |
| 6(viii) as amended by Act 32/1994 | Coconut including copra (cocos nucifera) | At the point of last purchase in the State by a dealer for crushing oil | 1.4.1994 |

vii. III Schedule - the State Act :

'Part A : enumerates the goods that are subjected to additional duties of excise and for which sales tax cannot be levied.

(Part B was inserted for the first time by Act 32 of 1994).

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Part B :
Entry 10 : coconut, copra and tender coconut other than those falling under the Second Schedule (with effect from 1.4.1994).
Entry 17 : coconut, copra other than those falling under the Second Schedule (effective from 27.3.2002)
Entry 28 : fresh vegetables, tender coconut, potatos, garlic and fruits (effective from 27.3.2002)'.

viii.Clarifications/Circulars issued by the Commissioner of Commercial Taxes :
'Acts Cell - III/65/65129/98/12.3.1999

Circular

Sub: C.S.T.Act, 1956 - Clarification on rate of tax of interstate sale of coconuts - regarding.

Ref : This office Lr.No.Acts Cell III/84896/96 dated 22.7.1998.

The rate of tax on the last purchase of coconuts was reduced to 2% with effect from 5.3.1997 by notification issued under Section 17(1) of the TNGST Act, 1959 in notification No.II(1)/ CTRE/25(b)/97 dated 1.4.1997. Therefore, it is clear that interstate sale of coconuts is taxable at 2% with 'C' form from 5.3.1997 to 31.3.1997. However, another notification was issued under section 8(5) of the CST Act in notification NO.II (1)/CTRE/22(a-11)/97 dated 5.3.1997 reducing the tax payable in respect of sale of coconuts or copra in the course of interstate trade to 2%. Though it is generally mentioned in the notification that 'the tax payable by any dealer under the said Act' without mentioning section 8(1) and 8(2), the intention of the Government was to reduce the tax payable under Section 8(2) of the CST Act. If the intention of the Government was to reduce the rate of tax to 2% only on production of 'C' form, then there is no necessity to issue a separate notification under the CST Act, since the rate of tax is already 2% as per the reduced rate available under the Tamilnadu General Sales Tax Act.

The Government have made a variation to the notification NO.II(1)/CTRE/25(b)/97 dated 1.4.1997 reducing the rate from 4% to 1% in respect of the tax payable by any

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dealer under the said Act at the point of last purchase of coconut including copra in the State for crushing oil in notification No.II/(1)/CTRE/41(c-3)/98 dated 27.3.1998. In view of this notification the interstate sale of coconut with 'C' form is taxable at 1% and without 'C' form at 2% with effect from 27.3.1998.

The Government by notification No.II(1)/CTRE/ 43(d-6)/98 dated 7.4.1998 have reduced the rate to 1% in respect of the sale of coconut including copra effected by any dealer in the course of interstate Trade/Commerce. Hence, the interstate sale of coconut is taxable at 1% with or without 'C' form.

In the above circumstances, the rates of tax under the CST Act 1956 on the interstate sale of coconuts are claried as follows :

| Period | With 'C' Form | Without 'C' Form |
|---|---|---|
| 5.3.97 to 26.3.98 | 2% | 2% |
| 27.3.98 to 6.4.98 | 1% | 2% |
| 7.4.98 onwards | 1% | 1% |

It is also clarified that the reduced rate of tax modified by the Government is related to the goods falling under entry 6(viii) of Second Schedule to the TNGST Act, 1959. The interstate sale of goods falling under entry 10 of Part B of Third Schedule to the TNGST Act, 1959 continues to be exempted from tax.

All the Deputy Commissioners (CT) are requested to bring to the notice of Subordinate Officers, the above clarification. The Territorial Deputy Commissioners are requested to instruct the Assessing Officers to complete the assessments under the Central Sales Tax Act relating to coconut without waiting for orders as instructed in the reference cited.' "

3. Mr.C.Natarajan, learned Senior Counsel appearing for some of the petitioners submitted the following propositions and contentions :

i. Section 28-A is in the nature of an advance ruling provision to enable trade and commerce to transact business and organising their affairs. Tax structure is an important component of price and the provison is intended in public interest;

ii. An adverse circular issued by the Commissioner of

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Commercial Taxes is not binding on the assessee who can challenge it either before an appellate forum or before Court;

iii. A beneficial statutory circular favourable to the assessee can be enforced by the assessee. But the Revenue cannot question its own circulr as contrary to law or erroneous and cannot even take a stand (before a Court) contrary to the circular. Even an appeal cannot be preferred questioning the correctness of the circular. Even a show cause notice contrary to circular is without jurisdiction and ab initio void. This is so even in respect of a non-statutory circular;

iv. If the circular gives an interpretation of statutory provision beneficial to assessee on which a different view is expressed by the Supreme Court, even so, the circular has been held to bind till withdrawn;

v. The pending reference to the Larger Bench by the Honourable Supreme Court is on the question whether a circular can be required to be complied with by Revenue, even if the Supreme Court declares the law differently which by virtue of Article 141 of The Constitution is binding on all Courts within the territory of India;

vi. The heading of Section 8 of the Central Act is 'rate of tax on sales in the course of interstate trade and commerce'. Rate is an important component of tax legislation;

vii. To the extent material, Section 8(2-A) deals with 'sale of any goods the sale or purchase of which is exempt from tax generally;

viii. The focus of Section 8(2-A)/Section 8(2)(c) is on the goods and the enquiry is, are the goods exempt from tax generally? The explanation negatives a case where the exemption from tax under the State law is in specified circumstance or specified condition;

ix. Section 8 of the State Act is captioned 'exemption from tax' and states 'not liable to pay any tax' in respect of the goods specified in the Third Schedule. 'Such goods' specified in the Third Schedule are exempt;

x. Section 8 is subject to such restrictions and conditions as may be prescribed. The restriction or condition should be found in the Third Schedule. Serial NO.10 of the Third Schedule (upto 31.3.1994) and later Serial No.17 and Serial NO.28 of the Third Schedule (from 1.4.1994) specified 'coconut, copra and tender coconut', 'other than those falling under the Second Schedule'. 'Falling' refers to 'goods' excluded and not transaction;

xi. It is of no account that the word 'coconut i.e copra' considered in the context of Sections 14(vi)(viii) of the Central Act may be wide to include 'watery coconut',

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'dried coconut', 'desiccated coconut' or 'copra'. The tax treatment in the State law alone is relevant to consider Section 8(2-A)/Section 8(2-c) because it is open for the State to tax one class and exempt another class of goods falling under Section 14(vi)(viii);

xii. In Section 14(vi)(viii), the words are 'coconut i.e copra excluding tender coconut'. By contrast, from 1.4.1994, the State Act deletes the words 'excluding tender coconut' which has significance. Serial No.6(viii) of the Second Schedule states 'coconut including copra' incorporating the words 'for crushing oil'. The words in the State Act invite the principle of noscitur a sociss so that the word 'coconut' is restricted to the class of goods to which copra belongs such as dried coconut, desiccated coconut;

xiii. 'Coconut' is the genus and the specie are 'watery coconut', 'dried coconut', 'copra', 'desiccated coconut' and 'tender coconut'. The Second Schedule deals with a class of goods as captioned by Serial No.6 as 'oil seeds, that is to say' - and sub.items (viii) 'coconut including copra'. Tax is on the last purchae by dealer 'for crushing oil';

xiv. Use of the words 'coconut including copra' under the caption 'oil seeds' in the Second Schedule, with the further expression 'for crushing oil' identifies that class of coconut which is oil bearing and fit for crushing;

xv. Serial NO.10 and the later Serial NO.17 of the Third Schedule read with Section 8 deal with coconut not belonging to the class falling under the Second Schedule. Watery coconuts (generally used for culinary/pooja purposes) not sharing the character of 'copra' in the Second Schedule remain in the Third Schedule;

xvi. It cannot be disputed that if a class of coconut is generally exempt, there is no central sales tax. Classification may be with reference to value/price or characteristic or some feature popularly found. Goods of that clause fall under Section 8(2-A)/8(2-c) of the Central Act;

xvii. The judgments relied by the Revenue are with reference to the goods the sale or purchase of which was generally taxable under the State Act, but the exemption was on transaction effected in a specified condition or circumstance. The present case is a converse one, where the goods in the Third Schedule are generally exempt under Section 8, but the tax is on one class of goods - coconut (i.e. Copra) fit for crushing;

xviii. When Serial NO.6(viii) of the Second Schedule taxes only the last purchase by oil mill, in no other situation, 'coconut including copra' is taxed under the

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Act. If so, Section 8 read with Serial No.10/Serial NO.17 of the Third Schedule are unnecessary to exempt rest of the transactions.This interpretation renders Serial NO.10/Serial NO.17 of the Third Schedule otiose and purposeless. Revenue is wrong in stating that Serial NO.6 (viii) of the Second Schedule and Serial NO.10/Serial NO.11 of the Third Schedule deals with the same class of goods. This fails in respect of watery coconuts; and

xix. The mention of desiccated coconut in Serial No.3-B of the Second Schedule with effect from 27.3.2002 is of no effect. The consequence is to exclude desiccated coconut (described as a shredded copra by the Supreme Court) as a class from the rest of the exempted goods in Serial NO.10/Serial NO.17 of the Third Schedule, just as coconut i.e copra of the Second Schedule found fit for crushing oil."

4. In fine, the plea on behalf of the assessees is that having regard to the circular issued by the Commissioner of Commercial Taxes in - Acts Cell - III/65129/98 dated 12.3.1999 clarifying the position that the transactions in question are not taxable at any rate in view of the exemption accorded in the Third Schedule to the State Act and having regard to Section 8(2A) of the Central Act, the transactions are exempt from the levy in question and that notwithstanding any pronouncements in this regard, as long as the circular dated 12.3.1999 holds the field, there is no scope for subjecting the interstate sales of watery coconuts to levy under the Central Act.

5. Per contra, it is contended on behalf of the State that the liability to tax is to be adjudged on the basis of the provisions contained in the statute and the circular dated 12.3.1999 does not in any way help the assessees to avoid the statutory liability. It is also urged on behalf of the State that the exemption granted under item NO.17 of Part B to the Third Schedule to the State Act being a conditional one and not a general exemption, it cannot enure to the benefit of the assessees by virtue of Section 8(2A) of the Central Act and consequently, the transactions in question are liable to tax. It is further contended that the law declared by Competent Courts is binding on all the authorities and the assessees as well and that any administrative instructions issued by the Departmental Authorities cannot divest the jurisdiction of the statutorily created Adjudicatory Authorities invested with quasi judicial powers to decide the issues raised before them objectively and in accordance with law.

6. Learned counsel on either side referred to several decisions of the Courts including those of the Supreme Court of India and it is proposed to refer to only the following among them, which are relevant and necessary without much multiplication :

"i. Collector of Central Excise, Vadodara Vs. Dhiren

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Chemical Industries (2002 (2) SCC 127) : (2002) 139 ELT 3 (SC) wherein in paragraph 9 the Apex Court has laid down as follows :

"We need to make it clear that, regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue."

ii. Kalyani Packaging Industry Vs. Union of India (2004 (6) SCC 719 : (2004) 168 ELT 145 (SC)) wherein the Apex Court has laid down as follows :

"We have noticed that para 9 of Dhiren Chemical's case is being misunderstood. It therefore becomes necessary to clarify para 9 of Dhiren Chemical's case. One of us (Variava,J) was a party to the judgment of the Dhiren Chemical's case and knows what was the intention in incorporating para 9. It must be remembered that law laid down by this Court is law of the land. The law so laid down is binding on all Courts/Tribunals and Bodies. It is clear that circulars of the Board cannot prevail over the law laid down by this Court. However, it was pointed out that during hearing of Dhiren Chemical's case because of circulars of the Board in many cases the Department had granted benefits of exemption notifications. It was submitted that on interpretation now given by this Court in Dhiren Chemical's case, the Revenue was likely to reopen cases. Thus para 9 was incorporated to ensure that cases where benefits of exemption notification had already been granted, the Revenue would remain bound. The purpose was to see that such cases were not reopened. However, this did not mean that even in cases where Revenue/Department had already contended that the benefit of an exemption notification was not available, and the matter was sub-judice before a Court or a Tribunal, the Court or Tribunal would also give effect to circulars of the Board in preference to a decision of the Constitution Bench of this Court. Where as a result of dispute the matter is sub-judice a Court/Tribunal is, after Dhiren Chemical's case, bound to interpret as set out in that judgment. To hold otherwise and to interpret in the manner suggested would mean that Courts/Tribunals have to ignore a judgment of this Court and follow circulars of the Board.That was not what was meant by para 9 of Dhiren Chemical's case."

(Emphasis Supplied)

iii. Commissioner of Central Excise, Bolpur Vs. Ratan Melting and Wire Industries, Calcutta (2005 (3) SCC 57) wherein the Apex Court has laid down as follows :

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"A disparate view has been taken in CCE Vs. Maruti Foam (P) Ltd. (2004 (6) SCC 722) (SCC para 7) and Commissioner of Customs Vs. Indian Oil Corporation Ltd. (2004 (3) SCC 488) (SCC para 34). It appears to us that the law declared by this Court is binding on the Revenue/Department and once the position in law is declared by this Court, the contrary view expressed in the circular should perforce lose its validity and becomes non est. Though the view expressed in Kalyani case (2004 (6) SCC 719) and our view about invalidation might clarify the observations in para 11 of Dhiren Chemical case (2002 (2) SCC 127), we feel that the earlier judgment in Dhiren Chemical case being by a Bench of five Judges, it would be appropriate for a Bench of similar strength to clarify the position. In the circumstances, we refer the matter to a larger Bench of five Honourable Judges."

iv. M/s.Hindustan Aeronautics Ltd. Vs. CIT, Karnataka-I, Bangalore (AIR 2000 SC 2178) wherein the Apex Court has held as follows:

"However, the learned counsel for the appellant relied on the decisions in Navnithlal C.Javeri Vs. K.K.Sen, AAC of Income Tax (56 ITR 198) : AIR 1965 SC 1375); Ellerman Lines Ltd. Vs. C.I.T. (82 ITR 913 : AIR 1972 SC 524 : 1972 Tax LR 246); and K.P.Varghese Vs. ITO (131 ITR 509 : AIR 1981 SC 1922 : 1981 Tax LR 1448) to contend that the circular issued by the Board under Section 119 of the Act is binding on the Commissioner in terms of which he was bound to examine the revision of the appellant on merits and the order of the learned Single Judge merely gives effect to such a course. Dr.Gaurishankar, learned Senor Advocate for the Revenue, however, pointed out by referring to several decisions of this Court to the effect that the circulars or instructions given by the Board are no doubt binding in law on the authorities under the Act but when the Supreme Court or the High Court has declared the law on the question arising for consideration it will not be open to a Court to direct that a circular should be given effect to and not the view expressed in a decision of the Supreme Court or the High Court. We find great force in the submissions made by learned Senior Advocate for the Revenue and find absolutely no merit in this appeal and the same stands dismissed."

v. Commissioner of Sales Tax, U.P. Vs. M/s.Indra Industries (AIR 2000 SC 3442) wherein the Apex Court has laid down as follows :

"A circular by tax authorities is not binding on the Courts. It is not binding on the assesssee. However, the interpretation that is thereby placed by the taxing

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authority on the law is binding on that taxing authority. In other words, the taxing authority cannot be heard to advance an argument that is contrary to that interpretation."

vi. Commissioner of Sales Tax, MP Vs. Popular Trading Company ((2000) 118 STC 379) wherein the Apex Court has laid down as follows :

"The view taken by the High Court in this case has lost sight of the expression in the opening clause of the entry 'oil seeds, that is to say'. The phrase 'that is to say' has been the subject matter of interpretation by this Court in State of Tamilnadu Vs. Pyare Lal Malhotra ((1976) 37 STC 319). The expression 'that is to say' is descriptive, enumerative and exhaustive and circumscribes to a great extent the scope of the entry. The entry provides for 'oil seeds, that is to say coconut', which again says, 'i.e.copra and coconut including any other commodity'. An oil seed botanically means a seed which is a flowering plant's unit of reproduction or germ capable of developing into another such plant. Seed which can yield oil is an oil seed. If a seed by reason of application of a scientific method produces oil is not necessarily understood to be an 'oil seed' in a common parlance. If a commodity possesses all the qualities of an oil seed it cannot be excluded from the ambit of the expression 'oil seed'. Oil is generally extracted from dry coconuts, but in some parts of India it is extracted even from copra recovered from fresh coconuts. Copra of watery coconut before it dries up may not yield as much oil as dried copra. The oil which it yields may also contain some watery substance which has to be eliminated for the purpose of recovering pure coconut oil. At the same time, it yields sufficient quantity of oil. Thus, 'watery coconut' while yielding oil merely because it yields some watery substance does not cease to be an 'oil seed' and, therefore, it falls within the entry."

vii. Commissioner of Sales Tax, J&K and others Vs. Pine Chemicals Ltd. and others ((1995) 96 STC 355 (SC)) wherein it is laid down as follows :

"The simple question before us is whether the Bench which decided Pine Chemicals (1992) 85 STC 432 (SC) : (1992) 2 SCC 683, is right in holding that the benefit of the said sub.section is available even where the goods are exempted with reference to industrial unit and for a specified period viz. period of five years from the date the relevant unit goes into production. In other words, the question is whether an exemption of the nature granted under Government Order NO.159 dated March 26, 1971, is an exemption available 'only in specified circumstances or

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under specified conditions' within the meaning of the Explanation to Section 8(2-A), as contended by the State or is it a case where the goods are exempt from the tax 'generally' within the meaning of Section 8(2-A), as contended by the respondents -dealers ? We are of the opinion that the respondents-dealers' contention cannot be accepted in view of the clear and unambiguous language of the sub.section.

The idea behind sub.section (2-A) of Section 8 of the Central Sales Tax Act, which we have analysed hereinbefore, is to exempt the sale/ purchase of goods from the central sales tax where the sale or purchase of such goods is exempt generally under the State sales tax law. We must give due regard and attach due meaning to the expression 'generally', which occurs in the sub.section and which expression has been defined in the Explanation. If the said expression had not been there, it could probably have been possible to argue that inasmuch as the goods sold by a particular manufacturer-dealer are exempt from the State tax in his hands, they must equally be exempt under the Central Act. But sub.section (2-A) requires specifically that such exemption must be a general exemption and not an exemption operative in specified circumstances or under specified conditions. Can it be said that the goods sold by the dealers in this case are exempt from tax generally under the State sales tax enactment ? The answer can only be in the negative. Such goods are exempt from tax only when they are manufactured in a large or medium scale industrial unit within five years of its commencement of production and sold within the said period, i.e in certain specified circumstances alone. The exemption is not a general one but a conditional one."

7. I have carefully considered the submissions of the learned counsel on either side in the light of the statutory provisions, notifications and the case laws on the subject.

8. So far as the contention relating to the binding nature of the circulars issued by the Commissioner and its enforceability, despite as it is claimed, judicial pronouncements declaring the position of law to the contrary is concerned, the same does not merit acceptance to that extreme. Though several decisions have been pressed into service on behalf of the petitioners in this regard, reference to the following latest decisions, which are directly on the point involved for consideration in the above writ petitions would suffice.

9. The observations in the case of Collector of Central Excise, Vadodara Vs. Dhiren Chemical Industries (2002 (2) SCC 127) : (2002) 139 ELT 3 (SC) made by way of clarification, that regardless of the

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interpretation that the Court has placed on that phrase on a particular phraseology, if there were circulars issued by the Central Board of Excise and Customs, which circulars placed a different interpretation upon the said phrase, that interpretation will be binding on the Revenue cannot be construed in the wide sense as it is now sought to be done by the learned counsel for the petitioners de hors the context, in which, those observations came to be made and the actual purpose and also the object of those observations in that case.

10. The fact that those observations were not meant to lay down any general proposition of law, that the circulars will hold the field de hors the declaration of law by Courts, was made clear by the Supreme Court in the case of Kalyani Packaging Industry Vs. Union of India (2004 (6) SCC 719 : (2004) 168 ELT 145 (SC)) wherein His Lordship Mr.Justice S.N.Variava, who was a party to the earlier Bench, which rendered the decision in Dhiren Chemical Industries' case (supra), clarified the position and intention of the Court and declared that the law laid down is binding on all Courts, Tribunals and Bodies and that the circulars of the Board cannot prevail over the law laid down by the Apex Court. His Lordship also explained the purpose of the said observation i.e to dissuade reopening of past matters.

11. Again in the decision in the case of Commissioner of Central Excise, Bolpur Vs. Ratan Melting and Wire Industries, Calcutta (2005 (3) SCC 57), a Bench consisting of three Honourable Judges of the Supreme Court not only endorsed, but approved the subsequent clarification of the scope of the observations in Dhiren Chemical Industries' case (supra), even while referring the matter to a Larger Bench for similar clarification. If at all such claims could be made by the assessees, it can only be based upon the principles of promissory estoppel provided necessary basis or ingredients to apply the doctrine is sufficiently substantiated and not otherwise. The fact that the decision in Dhiren Chemical Industries' case (supra) has been referred to a Larger Bench for an authoritative pronoucement about the impact of the judgment will not matter much so far as this Court is concerned in the context of the very interpretation and construction placed by a Bench of Three Honourable Judges of the Supreme Court on the real purpose, scope and effect of the observations.

12. In the case of M/s.Hindustan Aeronautics Ltd. Vs. CIT, Karnataka-I, Bangalore (AIR 2000 SC 2178), it was categorically held that when the Supreme Court or the High Court has declared the law on the question arising for consideration, it will not be open to a Court to direct that a circular should be given effect to and not the view expressed in a decision of the Supreme Court or High Court.

13. In the case of Commissioner of Sales Tax, U.P. Vs. M/s.Indra Industries (AIR 2000 SC 3442), it has been held that a circular by tax authorities is not binding upon the Courts or the assessees and the

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interpretation that was placed by the taxing authority as the law is binding on that authority only. In the light of the above, having regard to the very manner in which the earlier decision in the case of Dhiren Chemical Industries' case (supra) was construed by the very Apex Court in other cases, this Court is bound to respectfully adhere to and follow the said interpretation and cannot countenance the contra stand taken on behalf of the petitioners/assessees. Consequently, the matter has to be objectively considered and the liability of the assessees to tax has to be adjudicated on the basis of the law governing the matter in issue.

14. So far as the taxability of the transactions of the petitioners are concerned, the same requires to be adjudged in the light of the provisions of the Central Act and the provisions contained in the Second and Third Schedules to the State Act. In doing so, what is required to be considered at the threshold is as to whether 'watery coconuts' dealt with by the assessees falls within the entry as found described in the Second Schedule to the State Act. The said entry is fashioned upon the entries in Section 14 of the Central Act.

15. The Apex Court, while considering the identical entry in the decision in the case of Commissioner of Sales Tax, MP Vs. Popular Trading Company ((2000) 118 STC 379), held that an oil seed botanically means a seed, which is a flowering plant's unit of reproduction or germ capable of developing into another such plant and that a seed, which can yield oil, is an oil seed and if a commodity possesses all the qualities of an oil seed, it cannot be excluded from the ambit of the expression. In arriving at such conclusions, Their Lordships of the Apex Court also noticed specifically that though oil is generally extracted from dry coconuts, in some parts of the country, it is extracted even from copra recovered from fresh coconuts. Though copra of watery coconuts before it dries up may not yield as much oil as dried copra, it was ultimately held therein that 'watery coconuts' while yielding oil, merely because it yields some watery substance, does not cease to be an oil seed. There is, thus, no inconsistency or contravention of Section 14 of the Central Act.

16. A Constitution Bench of the Apex Court in the case of Sri Siddhi Vinayaka Coconut & Co. Vs. State of A.P. ((1974) 34 STC 103(SC)) also held that watery coconuts will fall within oil seeds. The entry in the Second Schedule is, therefore, sufficiently comprehensive to take within its fold all varieties of coconuts except those that are excluded specifically viz. tender coconuts alone.

17. So far as the entries in the Third Schedule to the State Act, on which heavy reliance is placed to claim exemption on the basis of Sections 8(2A) and 8(2C) of the Central Act is concerned, the nature of exemption engrafted in the relevant entries in the Third Schedule need consideration. The relevant entry in the Third Schedule unmistakably makes it clear that the exemption is not a general one relating to the commody

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coconut, copra, etc. But, what is exempt is only such of those, which does not fall under the relevant entry in the Second Schedule. As noticed earlier, except tender coconut, every other coconut i.e even watery coconut will fall under the taxable item. Inasmuch as the exemption granted is not in general terms, but in only specified circumstances and conditions, it cannot be availed of by the petitioners.

18. The question as to when an exemption is general in terms to avail of the benefit under Sections 8(2A) and 8(2C) of the Central Act and when it is only an exemption in specified circumstances and conditions is not res integra and has been adjudicated by more than one authoritative pronouncements of the Apex Court. It would suffice to advert to the decision in the case of Commissioner of Sales Tax, J&K and others Vs. Pine Chemicals Ltd. and others ((1995) 96 STC 355 (SC)) wherein while following the earlier decisions rendered by the Apex Court itself in the case of International Cotton Corporation (P) Ltd. Vs. Commercial Tax Officer ((1975) 35 STC 1(SC)) and in the case of Indian Aluminium Cables Ltd. Vs. State of Haryana ((1976)38 STC 108 (SC)), it was observed that general exemption means that goods should be totally exempt from tax before similar exemption from the levy of central sales tax can become available and when the exemption from taxation is conferred by conditions or in certain circumstances, there is no exemption from tax generally. Viewed in the said context, the exemption in this case cannot be considered to be a general exemption at all. Therefore, the interstate sales of watery coconuts are taxable under the provisions of the Central Act.

19. When it is held that the transactions are liable to tax and there is no general exemption as claimed on behalf of the petitioners, which would enure to them, the further question as to at what rate and in what circumstances they could be taxed in what manner are all matters for assessment by the Competent Authorities, who have jurisdiction in respect of such issues under the above Acts. As and when any order of assessment is passed, it is always open to them to vindicate their rights in accordance with and as are permissible in law.

20. For the foregoing reasons, except WP.NO.4883 of 2005, all the writ petitions are dismissed. No costs. Consequently, all connected pending WPMPs are also dismissed.

21. WP.NO.4883 OF 2005 :

In the light of the decision rendered above, this writ petition is disposed of with a direction that the petitioner - assessee, in case has got any grievance against the impugned order, can challenge the impugned proceedings before the jurisdictional Appellate Authority as provided for under the State Act. Since the time prescribed for preferring the appeal would have already expired, the petitioner is given 30 days' time from the date of receipt of a copy of this order to file the statutory appeal. If such an appeal is filed after satisfying the requirements of the statutory provisions, the Appellate Authority shall entertain the appeal without

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reference to the period of limitation prescribed under the relevant provisions of the State Act. Till the expiry of time hereby granted for filing the appeal, the respondents shall not give effect to the impugned order of assessment. Consequently, the connected WPMP is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

RS

To
1. The Commercial Tax Officer[FAC],
Tirupathur.

2. The Deputy Commercial Tax Officer,
Vaniyambadi.

3. The Deputy Commercial Tax Officer[Addl.],
Gudiyatham[West].

4. The Commercial Tax Officer, Vaniyambadi.

5. The Deputy Commercial Tax Officer[Main],
Gudiyatham[West].

6. The Deputy Commercial Tax Officer,
Gudiyatham[West].

7. The Commercial Tax Officer,
Vaniyambadi, Vellore.

8. The Deputy Commercial Tax Officer[East],
Gudiyatham.

9. The Commercial Tax Officer,
Gudiyatham [West], Gudiyatham.

10. The Commercial Tax Officer,
[Bazaar Circle], Salem, Salem District.

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11. The Commercial Tax Officer,
Krishnagiri.

12. The Deputy Commercial Tax Officer,
Tirupathur Assessment Circle,
Tirupathur, Vellore District.

13. The Commercial Tax Officer,
Tirupathur Assessment Circle,
Tirupathur, Vellore District.

14. The Deputy Commercial Tax Officer,
Tirupathur, Vellore District.

15. The Deputy Commercial Tax Officer,
West, Gudiyatham Taluk, Vellore District.

16. The Commercial Tax Officer,
Swamangalam Circle, Salem.

17. The Deputy Commercial Tax Officer,
Vellore Rural, Vellore.

18. The Secretary to Govt.,
State of Tamil Nadu,
Department of Commercial Taxes and Religious Endowments,
Fort St. George, Chennai 9.

19. The secretary,
Union of India,
Ministry of Finance, Department of Revenue,
New Delhi.

20. The Commercial Tax Officer,
Thirumangalam.

21. The Deputy Commercial Tax Officer, Melur.

22. The Deputy Commercial Tax Officer, Salem Rural Circle, Salem.

+ 1 CC To Mr. N.Inbarajan, Advocate SR NO. 55304

+ 1 CC To Mr. K.Soundararajan, Advocate SR NO. 55425

+ 1 CC To Mr. T.Dhanyakumar, Advocate SR NO. 55452

+ 3 CCs to Mr.K.Selvaraj, Advocate SR NO 55328

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